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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ARNOLD PARTIDA, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

vs.

PRO WALL LATH & PLASTER, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2021-00046724-CU-OE-CTL

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/03/2021 at 04:47:24 PM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

1 Plaintiff Arnold Partida (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant PRO WALL LATH & PLASTER,
6 INC. and DOES 1 through 10 (PRO WALL LATH & PLASTER, INC. and DOES 1 through 10
7 are collectively referred to as “Defendants”) for civil penalties under the Private Attorneys
8 General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from
9 Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages),
10 failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all
11 earned wages twice per month, failure to maintain accurate records of hours worked and meal
12 periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure
13 to indemnify for necessary business expenditures.

14 2. For over 50 years, California’s courts and legislature have recognized that this
15 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
16 Wages are not ordinary debts. Because of the economic position of the average worker and his
17 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
18 that employees are promptly paid the minimum/overtime wages that the Legislature has required
19 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
20 criminalized certain types of violations. In extending extra protection to deter violations of these
21 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
22 other damages other than civil penalties—California has enacted the PAGA to permit an
23 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
24 action.

25 3. All California employees during the relevant statutes of limitations who are or
26 were harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved
27 Employees worked for Defendants as hourly-paid or non-exempt employees within the
28 applicable statutory period.

1 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
2 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
3 California. Plaintiff does not seek to recover anything other than penalties as permitted by
4 California Labor Code Section 2699 at this time. To the extent that statutory violations are
5 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
6 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
7 declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by
8 the PAGA.

9 5. Defendants own/owned and operate/operated an industry, business, and
10 establishment within the State of California, including San Diego County. As such, and based
11 upon all the facts and circumstances incident to Defendants' business in California, Defendants
12 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
13 Commission ("IWC"), and the California Business & Professions Code.

14 6. On information and belief, Defendants, and each of them were on actual and
15 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
16 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
17 willful and deliberate.

18 7. At all relevant times, Defendants were and are legally responsible for all of the
19 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
20 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
21 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
22 the doctrine of "respondeat superior".

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THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident who worked for Defendants in Escondido, California from approximately March 2017 to approximately May 2020.¹

B. Defendants

9. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant PRO WALL LATH & PLASTER, INC. is, and at all times herein mentioned, was:

- (a) A corporation qualified to do business and actually conducting business in numerous counties throughout the State of California, including in San Diego County; and,
- (b) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees because Defendant PRO WALL LATH & PLASTER, INC. suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

10. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.”

1 California.

2 12. Plaintiff is informed and believes and thereon alleges that at all relevant times
3 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
4 the other employees and exercised control over their wages, hours, and working conditions.
5 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant
6 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
7 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
8 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
9 a joint enterprise for profit, and bore such other relationships to some or all of the other
10 Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff
11 is informed and believes and thereon alleges that each Defendant acted pursuant to and within the
12 scope of the relationships alleged above, that each Defendant knew or should have known about,
13 and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
14 Defendants.

15 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 13. Plaintiff Arnold Partida worked for Defendants in Escondido, California from
17 approximately March 2017 to approximately May 2020. At all times, Defendants paid Plaintiff
18 an hourly wage and classified him as non-exempt from overtime.

19 14. Throughout Plaintiff's employment, Defendants committed numerous labor code
20 violations under state law. As discussed below, Plaintiff's experience working for Defendants
21 was typical and illustrative.

22 **A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time,**
23 **and Overtime Wages**

24 15. Under California law, an employer must pay for all hours worked by an employee.
25 "Hours worked" is the time during which an employee is subject to the control of an employer,
26 and includes all the time the employee is suffered or permitted to work, whether or not required
27 to do so.

28 16. Labor Code § 510 provides that employees in California shall not be employed

1 more than eight hours in any workday or forty (40) hours in a workweek unless they receive
2 additional compensation beyond their regular wages in amounts specified by law.

3 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
4 be employed more than eight hours in any workday unless they receive additional compensation
5 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
6 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

7 18. Throughout the statutory period, Defendants maintained a policy and practice of
8 not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum,
9 straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees
10 to work “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and the Aggrieved
11 Employees to work unpaid prior to clocking in for the workday and during legally required meal
12 periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay
13 for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff
14 and the Aggrieved Employees worked.

15 19. Defendants also regularly used a system of time rounding and/or synthetic
16 timekeeping that resulted, over a period of time, in failing to compensate Plaintiff and the
17 Aggrieved Employees properly for all the time they have actually worked, even though the
18 realities of Defendants’ operations are such that it is possible, practical, and feasible to count and
19 pay for work time to the minute. Accordingly, Defendants frequently paid Plaintiff and the
20 Aggrieved Employees less than all their work time. Some of this unpaid work also should have
21 been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to
22 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

23 **B. Failure to Provide Meal Periods**

24 20. Under California law, employers have an affirmative obligation to relieve
25 employees of all duty in order to take their first 30-minute, duty-free meal period by the end of
26 their fifth hour of work in a workday, and to allow employees to take their second 30-minute,
27 duty-free meal period by the end of their tenth hour of work. Further, employees are entitled to
28 be paid one hour of additional wages for each workday they were not provided with all required

1 meal period(s).

2 21. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff
3 and the Aggrieved Employees with legally compliant meal periods. Defendants regularly, but
4 not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive
5 hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every
6 five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal
7 periods that were not provided by the end of the fifth hour of work or tenth hour of work.
8 Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by
9 requiring, pressuring, or encouraging them to perform work tasks which could not be completed
10 without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the
11 Aggrieved Employees permission to take a meal period. Defendants also informed Plaintiff of
12 his right to, nor permitted him to take, a second meal period when Plaintiff worked at least ten
13 hours in a workday. Accordingly, Defendants' policy and practice was not to provide meal
14 periods to Plaintiff and the Aggrieved Employees in compliance with California law.

15 22. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
16 additional wages for each workday he or she was not provided with all required meal period(s).
17 Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the
18 additional wages to which they were entitled for meal periods that were not provided.

19 **C. Failure to Authorize and Permit Rest Periods**

20 23. Employers are required by California law to authorize and permit breaks of ten
21 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
22 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the
23 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
24 itself a violation of California's rest break laws.

25 24. Throughout the statutory period, Defendants wrongfully failed to authorize and
26 permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants
27 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
28 four consecutive hours a day without Defendants authorizing and permitting them to take a 10-

1 minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of
2 four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that
3 were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff
4 and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work
5 tasks which could not be completed without working in lieu of taking mandatory rest periods, or
6 by denying Plaintiff and the Aggrieved Employees permission to take a rest period.
7 Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the
8 Aggrieved Employees to take rest periods in compliance with California law.

9 25. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
10 additional wages for each workday he or she was not authorized and permitted to take all
11 required rest periods. Defendants, however, regularly failed to pay Plaintiff and the Aggrieved
12 Employees the additional wages to which they were entitled for rest periods and that they were
13 not authorized and permitted to take.

14 **D. Failure to Pay All Earned Wages Twice Per Month**

15 26. Based on Defendants' failure to pay Plaintiff and the Aggrieved Employees for all
16 wages as discussed above, Defendants also violated Labor Code § 204.

17 27. Labor Code § 204 requires employers to pay employees all earned wages two
18 times per month. Throughout the statutory period, employees were entitled to be paid twice a
19 month at their regular rates, including all meal period premium wages owed, rest period premium
20 wages owed, and wages owed for overtime hours worked. However, during all such times,
21 Defendants systematically failed and refused to pay the employees all wages due, and failed to
22 pay those wages twice a month, in that employees were not paid all wages for all meal periods
23 not provided by Defendants, all wages for all rest periods not authorized and permitted by
24 Defendants, and all wages for all hours worked. As a result, Defendants owe employees the
25 legally required wages not paid, and Plaintiff and the Aggrieved Employees suffered damages in
26 those amounts.

27 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

28 28. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to

1 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
2 fails to maintain accurate and complete records required by California Labor Code § 1174 is
3 subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
4 employer shall keep time records showing when the employee begins and ends each work period.
5 Meal periods and total hours worked daily shall also be recorded

6 29. Defendants, however, failed to maintain accurate records of hours worked and all
7 meal periods taken or missed by Plaintiff and the Aggrieved Employees.

8 30. Defendants' failure to provide and maintain records required by the California
9 Labor Code and IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
10 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
11 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
12 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
13 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
14 Employees have suffered and continue to suffer, substantial losses related to the use and
15 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
16 to compel Defendants to fully perform its obligation under state law, all to their respective
17 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to
18 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the
19 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
20 understanding, and disputing the wage payments paid to them.

21 **F. Failure to Timely Pay All Wages at Termination**

22 31. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
23 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
24 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
25 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
26 two (72) hours previous notice of his or her intention to quit, in which case the employee is
27 entitled to his or her wages at the time of quitting.

28 32. Throughout the statutory period, the employment of Plaintiff and many other

1 Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the
2 employment of others will be terminated. However, during the relevant time period, Defendants
3 failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without
4 abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time
5 of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These
6 unpaid wages include wages for unpaid work time (including minimum, straight time, and
7 overtime wages), missed meal period premium wages, and missed rest period premium wages.

8 33. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
9 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
10 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
11 at the same rate until paid or until an action is commenced; but the wages shall not continue for
12 more than thirty (30) days.

13 34. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from
14 Defendants their additionally accruing wages for each day they were not paid pursuant to Labor
15 Code § 203.

16 **G. Failure to Furnish Accurate Itemized Wage Statements**

17 35. Labor Code § 226(a) provides that every employer shall furnish each of his or her
18 employees an accurate itemized wage statement in writing showing nine pieces of information,
19 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
20 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
23 which the employee is paid, (7) the name of the employee and the last four digits of his or her
24 social security number or an employee identification number other than a social security number,
25 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
26 rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate by the employee. An employee is presumed to suffer an injury if this information is
28 missing. (Labor Code § 226(e)(2)(B)(iii).)

1 36. The statute further provides: “An employee suffering injury as a result of a
2 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
4 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
5 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
6 to an award of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

7 37. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
8 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
9 rates, and all gross and net wages earned (including correct hours worked, correct wages for meal
10 periods that were not provided in accordance with California law, and correct wages for rest
11 periods that were not authorized and permitted to take in accordance with California law).

12 38. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved
13 Employees suffered injury and damage to their statutorily protected rights. Accordingly,
14 Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater
15 of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an
16 aggregate penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

17 **H. Failure to Indemnify for Necessary Expenditures**

18 39. Labor Code § 2802(a) provides that employers shall indemnify his or her
19 employees for all necessary business expenditures or losses that have been incurred by the
20 employees in direct discharge of his or her duties. Throughout the statutory period, Defendants
21 wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in
22 direct discharge of their duties for Defendants. Plaintiff and the Aggrieved Employees regularly
23 paid out-of-pocket for necessary employment-related expenses in the form of work attire,
24 personal cell phone use, and gas mileage. Plaintiff and the Aggrieved Employees incurred
25 substantial expenses as a direct result of performing their job duties for Defendants, but
26 Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these employment-
27 related expenses.

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1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
3 **2004, Cal. Lab. Code § 2698 et seq.)**

4 40. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
5 though fully set forth herein.

6 41. At all times herein mentioned, Defendants were subject to the Labor Code of the
7 State of California and the applicable IWC Orders.

8 42. California Labor Code § 2699(a) specifically provides for a private right of action
9 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
10 law, any provision of this code that provides for a civil penalty to be assessed and collected by
11 the Labor and Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
13 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
14 herself and other current or former employees pursuant to the procedures specified in Section
15 2699.3.”

16 43. Plaintiff has exhausted his administrative remedies pursuant to California Labor
17 Code § 2699.3. On August 27, 2021, he gave written notice by online filing to the Labor and
18 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
19 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
20 former Aggrieved Employees, including the facts and theories to support the violations. Plaintiff
21 also paid the filing fee on August 27, 2021. Plaintiff’s PAGA case number is LWDA-CM-
22 842733-21 (*Arnold Partida v. Pro Wall Lath & Plaster, Inc.*).

23 44. The statute of limitations is tolled while a plaintiff exhausts his administrative
24 remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor
25 Code § 2699.3(d).)

26 45. The statute of limitations is also tolled from April 6, 2020 to October 1, 2020
27 pursuant to Rule 9(a) of the Emergency Rules Related to COVID-19.

28 46. More than sixty-five (65) days has elapsed since Plaintiff provided notice, but the

1 LWDA has not indicated that it intends to investigate Defendants' Labor Code violations
2 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
3 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
4 this Complaint. These penalties include, but are not limited to, penalties under California Labor
5 Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

6 47. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
7 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
8 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
9 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

10 48. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
11 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
12 shall be entitled to an award of reasonable attorney's fees and costs."

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
15 against Defendants, jointly and severally, as follows:

16 1. That the Court declare, adjudge and decree that Defendants violated the California
17 Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages),
18 failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all
19 earned wages twice per month, failing to maintain accurate records of hours worked and meal
20 periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing
21 to indemnify for necessary business expenditures;

22 2. An award of civil penalties on behalf of himself and all similarly aggrieved
23 employees pursuant to PAGA;

24 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

25 4. Attorneys' fees and costs reasonably incurred;

26 5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

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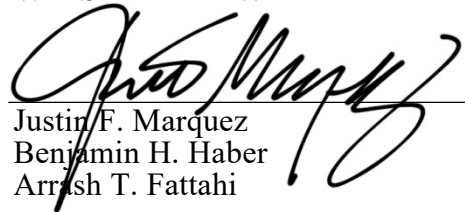
6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: November 3, 2021

WILSHIRE LAW FIRM

By:



Justin F. Marquez
Benjamin H. Haber
Arrish T. Fattahi

Attorneys for Plaintiff Arnold Partida